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OFFICE OF PETITIONS

In re Patent No. 7,840,192
Rao, et al.
Application No. 10/787,302
Issue Date: November 23, 2010
Filed: February 27, 2004
Attorney Docket No. 52404-317

: DECISION ON
: REQUEST FOR RECONSIDERATION
: of PATENT TERM ADJUSTMENT
: and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the “PETITION FOR PATENT TERM ADJUSTMENT”, filed January 24, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand five hundred eighty-four (1584) days to one thousand seven hundred fifty-three (1753) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED** to the extent indicated herein.

On November 23, 2011, the instant application matured into U.S. Patent No. 7,840,192 with a patent term adjustment of 1584 days. The Office determined a patent term adjustment of 1584 days based upon 488 days of Office delay pursuant to 37 CFR 1.703(a)(1), 230 days of Office delay pursuant to 37 CFR 1.703(a)(2), and 1132 days pursuant to CFR 1.703(b), reduced by 60 and 37 day of Applicant delay pursuant to 37 CFR 1.704(c)(8), and 2 days of Applicant delay pursuant to 37 CFR 1.704(b).

The proper amount of days over 36 months from the filing date of the application until the issue date was included in the “B” delay period. The over three year period began on February 28, 2007 and ended on November 23, 2010 (the day the patent issued), and is 1365 days. See 35 U.S.C. 154(b)(1)(B)(i).

However, the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either (1) a Board decision, (2) the examiner reopening prosecution and issuing another Office action, or (3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination).

Here the period consumed by appellate review is 234 days (not 233 days as alleged by patentees), beginning on August 13, 2007, the date of filing of the notice of appeal, and ending on April 2, 2008, the date the examiner reopened prosecution by mailing a non-final Office action. Thus, B delay is 1131 (1365 - 234) days.

In addition, Patentees dispute the period of reduction of 2 days entered for Applicant delay, pursuant to 37 CFR 1.704(b). This reduction has been reconsidered, and it is determined that entry of a reduction for this reply timely filed pursuant to 37 CFR 1.704(b) is not warranted. Accordingly, the period of reduction of 2 days is being removed.

In view thereof, the correct number of days of patent term adjustment is **one thousand seven hundred fifty-two (1752)** days (718 days of "A" delay and 1131 days of "B" delay, reduced by 97 days of Applicant delay).

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand seven hundred fifty-two (1752) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions